IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2354 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SARIFABEN D/O GULABKHAN KALEKHAN NAGORI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2354 of 2001

MS SUBHADRA G PATEL for Petitioner No. 1

MR HL JANI ASSTT GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 03/07/2001

ORAL JUDGEMENT

#. Heard Ms.Subhadra G.Patel, learned advocate appearing on behalf of the petitioner and Mr.H.L.Jani, learned AGP for respondents.

#. In the present petition, the order of detention dated

29th November, 2000 has been challenged by the present petitioner under Article 226 of the Constitution of India. The order of detention has been passed by the District Magistrate, Banaskantha at Palanpur under Section 3[1] of the PASA Act. The grounds of detention has been communicated and supplied to the present petitioner by the detaining authority under Section 9[1] of the PASA Act. According to the grounds of detention, in all nine cases have been registered against the present petitioner under the provisions of Bombay Prohibition Act. That last offence has been registered on dated 11th October, 2000. The statement of secret witnesses are recorded on 21st July, 2000 and 24th July, 2000. The said statements of the secret witness are verified by the Dy.S.P, Banaskantha at Palanpur on 29th July, 2000 but the said statement has not been verified by the Dist Magistrate, Banaskantha being detaining authority and therefore the statement of the secret witnesses remain without verification by the detaining authority. As such no endorsement has been made by he detaining authority that said statement are recorded by the concerned police inspector.

#. Learned advocate Ms. S.G.Patel appearing on behalf of the petitioner raised two contentions challenging the detention order. The first contention which has been raised by Ms.S.G.Patel, learned advocate that the statement of the secret witnesses which are recorded on 21st July, 2000 on 24th July, 200 has been verified by the Dy.S.P., Banaskantha on 29th July, 2000 but the said statement has not been verified by the detaining authority and therfore the genuineness of the statements made by the secret witness is not establsiehd on record and the same has not been verified by the detaining authority and therefore subjective satisfaction of the detaining authority as well as claiming privilege under Section 9[2] of the PASA Act is not established on record and therefore, the order of detention is required to set aside. The second contention which has been raise by the learned advocate Ms.S.G.Patel that last offence is registered on dated 11th October, 2000 and order of detention has been passed on 29th November, 2000. Therefore, there is delay of more than one month in passing the detention order from the date of last offence on date 11th October, 2000. Secondly, she also raised contention that the statement of the secret witness is verified by the Dy.S.P. on 29th July, 2000 and after four months, order of detention has been passed on 29th November, 2000 and therefore, there is also delay in passing the detention order. She further submitted that no reply has been filed by the State Government as well

as the detaining authority before this Court and therefore this contention has remained uncontroverted by the respondent. However, she relied upon of this Court reported in 1997 [1] GLH 381.

#. Learned AGP Mr.H.L.Jani appearing on behalf of the respondent - State has submitted that looking to the original records, three statements which have been recorded from the secret witnesses on 21st July, 2000 and 24th July, 2000 which have been verified by the Deputy Superintendent of Police, Banaskantha on 29th July, 2000 but such statemetns of three secret witnesses have not been verified by the detaining authority and therefore, he has not disputed this position which is on record. However, he submitted that looking to nine cases registered against the present petitioner under the prohibition cases, there were compelling circumstances that the detaining autority to pass the detention order and therefore the order of detention is legal and valid and according to him, in such circumsstances, no interference is required from thsi Cuort.

#. I have considred the submission of both learned adovcates and considering the undisputed fact on record, statements of three secret witnesses which are recorded by the police inspector and the same are verified by the Dy.S.P. but not by the detaining authority and therefore, according to my opinion, genuineness of the statements made by the secret witnesses have not been verified by detaining authority and while claiming the privilege under Section 9[2] of the Act, is not established on record and subjective satisfaction has not been established. Therefore, considering this fact available on the record, the order of detention is required to be quashed and set aside.

#. The second contention is that there is delay in passing the detention order looking to the last date of offence dated 11th October, 2000 and looking to the fact that Dy.S.P., Banaskantha has been verified on 29th July, 2000 and after four months of order of detention has been passed. This delay remained unexplained because the detaining authority has not filed any affidavit in reply. In light of this fact, view taken by this Court in reported decision in 1997 [1] GLH 381, the observations in para-21 are as under.

"21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent

court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S. Ramamurthy reported in 1993 (2) Suppli. SCC 61."

#. In view of the observations made by this Court and looking to the facts that the statement of three secret witnesses are not verified by the detaining authority and delay has not been explained by the detaining authority and no reply has been filed and therefore, according to my opinion, the order of detention is required to be quashed and set aside.

#. In the result, the present petition is allowed. The order of detention dated 29th November, 2000 passed by the District Magistrate, Banaskantha at Palanpur is hereby quashed and set aside. The present petitioner detenu - Sarifaben D/o Gulabkhan Kalekhan Nagori who has been detained in Baroda Central Jail is ordered to be released immediately if she is not required in any other case. Rule is made absolute with no order as to costs.

Date : 3-7-2001 [H. K. Rathod, J.]

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